

ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE
PO Box 41213
Phoenix, AZ 85080-1213
TEL: (480) 812-1700
ALEXANDER SAMUELS, SB#028926
asamuels@perkinscoie.com

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:) No. R-14-0007
)
) COMMENT OF ARIZONA
Petition to Adopt Rule 32.12, Ariz. R.) ATTORNEYS FOR CRIMINAL
Crim. P.) JUSTICE REGARDING PETITION
) TO ADOPT RULE 32.12, ARIZONA
) RULES OF CRIMINAL
) PROCEDURE
)
)

Pursuant to Rule 28 of the Arizona Rules of Supreme Court, Arizona Attorneys for Criminal Justice (“AACJ”) submits the following comment to the above-referenced petition. AACJ is a statewide not-for-profit membership organization of criminal defense lawyers, law students, and associated professionals dedicated to protecting the rights of the accused in the courts and in the legislature; promoting excellence in the practice of criminal law through education, training, and mutual assistance; and fostering public awareness of citizens’ rights, the criminal justice system, and the role of the defense lawyer. AACJ is the Arizona state affiliate organization to the National Association of

Criminal Defense Lawyers, with which it shares its pursuit of ensuring justice and due process for persons accused of crime, improving the integrity, independence and expertise of the criminal defense profession, and promoting the proper and fair administration of criminal justice.

AACJ supports adoption of a modified version of Proposed Rule 32.12. Petitioners, prosecutors, and the courts will all benefit by having clear guidance in the rules regarding how A.R.S. § 13-4240 is to be implemented. The version of the rule currently proposed, however, raises two areas of concern that AACJ believes the Court should remedy before adopting the rule.

First, subsection (a) of the proposed rule strays from the language of its counterpart, § 13-4240(A), in a critical and indefensible way. Although the language largely mirrors § 13-4240(A), which provides generally that those convicted of and sentenced for felony offenses may file petitions for DNA testing if they meet the other requirements of § 13-4240, the language in the proposed rule has one glaring omission. Section 13-4240(A) opens with the phrase “[a]t any time” That phrase is nowhere to be found in Proposed Rule 32.12. Although the proposed rule does not appear to otherwise place any time restriction on the filing of a petition, there is no reason not to adopt the statute’s unambiguous language. If the Court wishes to adopt Rule 32.12, it should include the language

“at any time” in subsection (a) to make absolutely clear, just as the legislature did, that no petition for DNA testing under these provisions will be time-barred.

Second, subsection (b) of the proposed rule, which governs service, appears to place a higher burden on petitioners than do the ordinary Rule 32 service requirements. Subsection (b) requires that the petitioner “serve the prosecuting agency that was responsible for the case at the time of conviction with a copy of the petition filed under this rule.” In contrast, the ordinary Rule 32 service requirement states:

On receipt of the notice, the court shall file a copy of the notice in the case file of each such original action and promptly send copies to the defendant, the county attorney, and the defendant’s attorney, if known, and the attorney general or the prosecutor, noting in the record the date and manner of sending the copies.

Ariz. R. Crim. P. 32.4(a).


AACJ sees no reason to depart from the ordinary Rule 32 service requirements in this context. There is no reason to place a higher administrative burden on these petitioners, who will be incarcerated and may often be proceeding pro se, at least at the time of filing. AACJ thus requests that the following sentence be stricken from the proposed rule: “The convicted person shall serve the prosecuting agency that was responsible for the case at the time of conviction with a copy of the petition filed under this rule.” In its place, AACJ suggests insertion of the following language: “Service of petitions filed under this rule shall be

governed by Rule 32.4.” This change will eliminate any potential inconsistency between the proposed rule and the other provisions of Rule 32.

Subject to the two changes requested herein, AACJ supports adoption of Proposed Rule 32.12.

DATED: May 20, 2014.

ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE

By _____
Alexander Samuels

This comment e-filed this date with:

Supreme Court of Arizona
1501 West Jefferson
Phoenix, AZ 85007-3329

Copies of this Comment
Mailed this date to:

William G. Montgomery & Mark Faull
301 W. Jefferson St. Suite 800
Phoenix, AZ 85003